

**STATE OF MAINE**

**DEPARTMENT OF MARINE RESOURCES**

<b>IN THE MATTER OF THE APPLICATION OF</b>	)	
<b>HERITAGE SALMON, INC. FOR AN</b>	)	<b>FINDINGS OF FACT,</b>
<b>AQUACULTURE LEASE LOCATED EAST OF</b>	)	<b>CONCLUSIONS OF LAW</b>
<b>BIRCH POINT, PERRY, WASHINGTON COUNTY,)</b>		<b>AND DECISION</b>
<b>MAINE</b>	)	

On August 25, 2004 Heritage Salmon, Inc. of Eastport, Maine applied for an aquaculture lease totaling 33 acres in the coastal waters of the State of Maine, located east of Birch Point in Cobscook Bay in Perry, Washington County, Maine. The applicant requested the lease for a term of ten (10) years for the purpose of cultivating Atlantic salmon (*Salmo salar*) using net pen culture techniques. The application was accepted as complete on September 21, 2004. A public hearing on this application was held on February 1, 2005 at 7:00 p.m., in Eastport.

Approval of aquaculture leases is governed by 12 M.R.S.A. §6072. This statute provides that a lease may be granted by the Commissioner of the Department of Marine Resources (DMR) if it is determined that, taking into consideration the number and density of aquaculture leases in an area, the project will not unreasonably interfere with the ingress and egress of riparian owners; navigation; fishing or other uses of the area; significant wildlife habitat and marine habitat or the ability of the site and surrounding marine and upland areas to support ecologically significant flora and fauna; or the public use or enjoyment within 1,000 feet of a beach, park, docking facility or certain conserved land owned by the Federal Government, the State Government, or a municipal governmental agency. The Commissioner must also determine that the applicant has demonstrated that there is an available source of organisms to be cultured for the lease site and that the lease will not result in an unreasonable impact from noise or lights at the boundaries of the lease site.

**Evidence Introduced Concerning the Nature**  
**and Impact of the Proposed Lease**

The evidentiary record before the Department regarding this lease application includes the Department file (Exhibit 1), including the application (Exhibit 2) and the Department site report (Exhibit 3), and the record of the February 1, 2005 public hearing. At the public hearing, testimony was given by the applicant's representative David Morang and the Department's Aquaculture Environmental Coordinator, Jon Lewis.

According to the application and the testimony by Mr. Morang, the proposed aquaculture lease is sought to raise Atlantic salmon on a lease site totaling 33 acres for a lease term of ten (10) years. Mr. Morang testified that the application proposes to reconfigure an existing lease site. The existing lease site, BPFI BE<sup>1</sup>, is 28.50 acres and contains twenty 70-meter circular cages. The proposed reconfigured site of 33 acres would slightly expand the existing site to the south and east and would contain twenty 100-meter circular cages. Mr. Morang testified that this application is part of a larger restructuring by the applicant that will result in fewer leases held and fewer acres leased by the applicant. He stated that they plan to terminate three leases, CONA CP1 and CP2 and CONA GI, if this reconfiguration and a reconfiguration of the South Bay lease are granted.

According to the application, Atlantic salmon would be raised on the site from smolts obtained from one of the applicant's hatcheries to market size over an 18-24 month period. Daily access to the site would be from either the public boat landing in Pembroke or the Heritage dock in Broad Cove, depending on biosecurity issues. The fish would be fed 2-3 times per day as weather permits by automatic feeders. Cameras would be used to monitor feed consumption, which should eliminate overfeeding. Feed would be transferred to the site by boat on a regular basis. Projected production at the proposed lease site would consist of stocking 500,000 fish on the site, which is an increase from approximately 300,000 fish stocked on the present site. According to the application, all power equipment used on the site, such as boats

and barges would be equipped with mufflers. Both the feed barge and work barge have engines that are below deck and equipped with mufflers. The skiff used on site has a 90 hp Honda engine. No lights would be used on the proposed lease site.

In accordance with Department regulations, Chapter 2.10(3), the applicant provided an environmental baseline of the proposed lease area. According to the baseline field survey submitted with the application, benthic sampling for infauna; sediment samples for granulometry; hydrographic measurements for current speed and direction; and an underwater video recording were performed at the proposed lease site. The fieldwork took place on April 21, 2003. The diver survey and underwater video recording was performed along five 60-meter dive transect lines. Fauna observed in the recording include sea urchins, scallops and sea stars. The observed sea floor consisted of sand, gravel and cobble. The current data collected from May 8-29, 2003 indicated a mean current velocity of 11.6 cm/sec. and a maximum current velocity of 54 cm/sec.

According to the application, the proposed lease site is not used by riparian owners for access. Thus, according to the applicant, ingress and egress of riparian owners would not be adversely affected. The majority of boat traffic in the area of the lease site is commercial fishermen. The Cobscook Bay Fishermen's Association submitted a letter to the Department stating that the association supports the proposed lease expansion. According to the applicant, the impact of the proposed site on existing uses of the area would be little to none due to the presence of the current lease site in the same location.

The Department's Aquaculture Environmental Coordinator (AEC) conducted a site visit at the proposed lease area on October 20, 2004. During the site visit, a diver survey, utilizing an underwater video camera, was performed. The AEC testified that the Department has video footage of the existing lease area that was obtained under the Finfish Aquaculture Monitoring Program. Therefore, the video obtained during the October 20<sup>th</sup> site visit was taken in the expansion area of the proposed lease site. The AEC created a site report summarizing the

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<sup>1</sup> The leaseholder of the current site, Birch Point Fisheries, will terminate its lease upon the issuance of this lease to

information obtained during the site visit and provided testimony regarding the site report at the public hearing.

According to the report and the AEC's testimony, the proposed 33-acre site is located east of Birch Point, in water depths of approximately 15.3 to 38.3 feet at mean low water. The bottom of the proposed lease site is comprised of cobble, sand and gravel. Local fauna observed at the proposed lease site include an abundance of green sea urchins; a common occurrence of sea scallops and sea stars; and occasional sea cucumbers, hermit crabs, northern red anemones and encrusting bryozoans. Very little vegetation was observed at the proposed lease site. According to the AEC's report, currents are tidally driven in a northwest/southeast direction, with a maximum current velocity of 54 cm./sec. and a mean current velocity of 11.6 cm./sec. According to the AEC, the water quality at the existing site is monitored every fall and has been acceptable. The AEC testified that video taken for the 2004 monitoring of the existing site showed the existing site to be in very good condition with a moderate amount of uneaten feed on the bottom. However, according to the report, the levels observed are not an environmental concern and no undesirable ecological change should be expected under the pens. The AEC testified that he is not concerned with the increased amount of fish proposed for the reconfigured site. Additionally, according to the AEC's report, the proposed lease area is not located within an Essential or Significant Habitat.

According to the AEC, no moorings other than those associated with the existing lease site were observed. Additionally, according to the AEC, the proposed activities will not interfere with navigation in the area. The proposed lease site is located in a somewhat "dead-end" navigational passage with shoal waters to the east and west. There has been no navigation conflict with the existing lease site. The site is located approximately 1,248 feet east of the shoals off of Birch Point and 3,216 feet west of Goose Island, thus there is sufficient room in which to navigate around the lease site.

According to the AEC's report, approximately 6-8 commercial fishing vessels were observed with drags in the water in the area of the proposed lease, likely fishing for sea urchins. There are 3 aquaculture lease sites located within 1 nautical mile of the proposed site. According to the AEC, the nearest site, GCIN BS, is located approximately 600 feet from of the proposed site. The existing site is located approximately 680 feet from GCIN BS. An expansion of the lease to the northwest, away from GCIN BS, would move it to shallower water and would be undesirable. The leaseholder of GCIN BS was provided a copy of the application and did not provide any comments to the Department.

### **Findings of Fact**

The proposed aquaculture lease is a reconfiguration of an existing lease site located in Cobscook Bay. The proposed site is located east of Birch Point, in water depths of approximately 15 to 38 feet at mean low water. There are no moorings located in the area of the proposed lease and the lease site is not used for riparian access. Navigation in the immediate area of the lease consists of commercial fishing vessels. There is approximately 1,248 feet of navigable water west of the lease site and 3,216 feet of navigable water to the east. Thus, there is sufficient water surrounding the proposed lease site for vessel traffic. Based on this evidence, I find that the lease will not unreasonably interfere with navigation or the ingress and egress of riparian owners.

Fishing in the area of the proposed lease site consists of commercial fishing for sea urchins. The Cobscook Bay Fishermen's Association supports the applicant's proposed lease reconfiguration. There are 3 other aquaculture lease sites located within 1 nautical mile of the proposed site. The existing lease is currently located 680 feet from the nearest lease, GCIN BS, and the reconfiguration would bring it approximately 80 feet closer to the site. An expansion in the other direction would put the lease site into shallower waters, which is not desired. No comments were received from the leaseholder of GCIN BS. Additionally, the applicant is in compliance with a bay management agreement and is in compliance with

Chapter 24. I find that the proposed lease will not unreasonably interfere with fishing or other uses of the area.

Existing fauna observed at the proposed site consists of green sea urchins, sea scallops, hermit crabs, sea stars, sea cucumbers, and northern red anemones. The proposed lease site is not located within an Essential Wildlife Habitat. The mean current velocity at the proposed lease site is 11.6 cm/sec. and the maximum current velocity is 54 cm/sec. The monitoring of the existing lease site has shown that the environmental conditions at the current lease site are acceptable. The projected production at the proposed lease site of 500,000 fish would be an increase of fish produced in the lease area, but would not result in additional impacts. Based on this evidence, I find that the proposed activities will not unreasonably interfere with significant wildlife habitat and marine habitat or with the ability of the site and surrounding marine and upland areas to support ecologically significant flora and fauna.

All juvenile salmon will be obtained from the applicant's hatcheries. Based on this evidence, I find that there is an available source of Atlantic salmon.

The proposed lease site is not located within 1,000 feet of any public beaches, parks, docking facilities, or conserved land. Based on this evidence, I find that the proposed lease site activities will not unreasonably interfere with public use or enjoyment within 1,000 feet of a beach, park, docking facility or certain conserved land owned by the Federal Government, the State Government, or a municipal governmental agency.

All power equipment used on the site would be equipped with mufflers. Both the feed barge and work barge have engines that are below deck and equipped with mufflers. The skiff used on site has a 90 hp Honda engine. No lights would be used on the proposed lease site. I find that the proposed lease will not result in an unreasonable impact from noise or lights at the boundaries of the lease site

### **Conclusions of Law**

Based on the above findings, taking into consideration the number and density of aquaculture leases in the area, I conclude that:

1. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner;
2. The aquaculture activities proposed for this site will not unreasonably interfere with navigation;
3. The aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area;
4. The aquaculture activities proposed for this site will not unreasonably interfere with significant wildlife habitat and marine habitat or with the ability of the site and surrounding marine and upland areas to support ecologically significant flora and fauna;
5. The applicant has demonstrated that there is an available source of Atlantic salmon to be cultured for the lease site; and
6. The aquaculture activities proposed for this site will not unreasonably interfere with public use or enjoyment within 1,000 feet of a beach, park, docking facility or certain conserved land owned by the Federal Government, the State Government, or a municipal governmental agency; and
7. The aquaculture activities proposed for this site will not result in an unreasonable impact from noise or lights at the boundaries of the lease site.

Accordingly, the evidence in the record supports a finding that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease set forth in 12 M.R.S.A. §6072.

### **Decision**

Based on the foregoing, the Commissioner grants the applicant's requested aquaculture lease of 33 acres from the date of this decision for the purpose of cultivating Atlantic salmon (*Salmo salar*) using net pen culture techniques. The applicant shall pay the State of Maine rent in the amount of \$100.00 per acre per year. The applicant shall post a bond or establish an escrow in the amount of \$25,000 conditioned upon their performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations.

### **Conditions to be Imposed on Lease**

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. Conditions are designed to encourage the greatest

multiple, compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the aquaculture law.

The following conditions are placed on this lease:

- (1) Navigation, boating and fishing shall be allowed in the open areas of the lease; and
- (2) the lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80.

The Commissioner may commence revocation procedures if he determines that substantial aquaculture has not been conducted within the preceding year or that the lease activities are substantially injurious to marine organisms. If any of the conditions or requirements imposed in this decision, in the lease, or in the law are not being observed, the Commissioner may revoke the aquaculture lease.

**Dated:** \_\_\_\_\_

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**George D. Lapointe (Commissioner)**  
**Department of Marine Resources**